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Via FCC Electronic Comment Filing System

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554

RE: Rulemaking Number – 11712
Proceeding Number 02-278

Hilton Worldwide respectfully submits this letter in support of ACA International's petition filed on Jan. 31 seeking clarification and revision to certain portions of the Telephone Consumer Protection Act ("TCPA") on the following matters:

1. Confirm that not all predictive dialers are categorically automatic telephone dialing systems.
2. Confirm that "capacity" under the TCPA means present ability.
3. Clarify that prior express consent attaches to the person incurring a debt, and not the specific phone number provided by the consumer at the time a debt was incurred.
4. Establish a safe harbor for autodialed "wrong number" non-telemarketing calls to wireless numbers.

Although Hilton Worldwide supports and agrees with all four of ACA's requests for clarity, we particularly agree that there is a critical need to distinguish that not all predictive dialers are categorically automatic telephone dialing systems and confirm that "capacity" under the TCPA means "present" ability.

In today's complicated regulatory environment, businesses must adhere to numerous state and federal rules and regulations governing how businesses may contact their customers by telephone. Examples include: calling only during certain hours at the called party's location, ensuring appropriate do not call exemptions are applied based on the called individual's residence and business relationship with the company, ensuring proper caller identification is transmitted with each call, ensuring proper recordkeeping of all calls and even to separate cellular phone numbers from landline numbers. It is impossible for a reputable business to communicate with their customers





in compliance with these laws without the use of sophisticated technology and equipment for each and every call.

The fact that technology and equipment used in making a call could be altered or used in a manner to violate the law should not be the basis for a violation of the law. Unfortunately, in the last several years this theoretical ability of technology and equipment has fueled litigation resulting in not only frivolous and harassing lawsuits, but inconsistent rulings and opinions by judges across the country. Like many companies, Hilton Worldwide has found itself a defendant in frivolous lawsuits and class action lawsuits attempting to capitalize on the ambiguity in the current law and court rulings, battling claims that the technology Hilton uses to assist in making a call could be configured to have the capacity to randomly and sequentially dial rather than how Hilton Worldwide actually uses its technology.

It is imperative that the FCC clarify and confirm, that merely using technology to contact customers via the telephone is not the same as using technology to randomly or sequentially generate and dial numbers to call. To do this, the meaning of "capacity" needs to be clarified and carefully defined for all calls, regardless of subject matter, to mean the "present ability".

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jonas Neihardt', written in a cursive style.

Jonas Neihardt

Sr. Vice President, Government Affairs